

INTERCOLLEGIATE BROADCASTING SYSTEM

Confidential memorandum
September 27, 1946

We have discussed with many of you by telephone the problem of our contract with the Intercollegiate Broadcasting Station Representatives (IBSR). We believe this is a good time to make a fuller report.

IBSR was set up in 1941 for the purpose of representing IBS stations for the sale of national advertising. It is owned by Joseph J. Weed, who also owns Weed and Company, a large representative of standard broadcast stations. A committee of IBS people had been designated to find and appoint an advertising representative, and had not succeeded in persuading any of the standard representatives to take our account. The idea was conceived of setting up a separate organization to handle only our account. Mr. Weed financed and operated it, with Louis Bloch (who was then also business manager of IBS) as its head. For a number of years, Bloch worked for both IBS and IBSR, which led to considerable confusion between the two. Bloch was replaced as Business Manager of IBS in June 1945, and as manager of IBSR in December 1945.

During the early years of IBSR's existence, the commissions which it earned did not cover the operating expenses, and this condition obtained again in 1946. To date Mr. Weed has probably lost about \$16,000 in this operation. This is, of course, a small figure in comparison with the earnings of Weed and Company.

In 1942 the staff of IBS felt that Mr. Weed had obtained too large a measure of control over the individual stations of IBS, and they had a contract drawn up in which Weed turned over to IBS his contracts with the individual stations and agreed to do business with them only through and by approval of IBS. This contract ran for a period of five years - until January first 1947, and contained a clause which provided for automatic renewal for one-year periods unless notice of termination was given six months in advance. Since notice was not given before July first 1946, the contract now stands renewed until January first, 1948.

This contract appoints IBSR as our representative and gives them a 15% commission on all national advertising. It is this contract which we have now decided to cancel. It is legally possible to do so, according to our lawyers, because in several cases IBSR has not abided by its terms.

In particular, the contract specifies that all contracts with the stations, or with advertisers for time on the stations, shall be signed by IBS, and not by IBSR. Yet, during the past year, IBSR has signed renewals of the Herald-Tribune contract with the agency, and this Fall has signed a new contract with the same sponsor. It has also signed contracts directly with the stations for the carrying of the programs.

Furthermore, the contract with Weed and IBSR states that the sole function of IBSR shall be the soliciting and obtaining of advertising contracts for IBS members. The failure of IBSR to obtain a reasonable quantity of such contracts for a period of seventeen months is, in view of the exclusive nature of the contract, sufficient grounds for terminating it. It is, in fact, the major ground for doing so. The general slump in radio advertising, which was offered as an excuse for failure to sell, is no longer a fact, and competent advisers in the radio industry can see no valid reason why advertising has not been sold, except perhaps the inadequacy of the attempts.

The contract also specifies that IBSR shall not represent any station or stations other than members of IBS. It has come to our attention that recently, in a presentation for the Herald-Tribune, a station which is not a member of IBS was

included. Although we have not seen the contract, we are led to believe that this outside station was included in it when it was actually signed by the agency and IBSR.

Weed has indicated, in particular in his letter to some of the Member stations this week, a desire to bypass IBS in his relations with college stations, especially in the matter of the formation of new stations. This would be clearly a violation of his contract with IBS.

We are advised by friends in the radio industry that the terms of the IBS-IBSR contract are considerably more stringent on us than is the usual practice in the radio industry. In particular, the duration of the contract - five years originally - is most unusual. The requirement of six months notice of intent not to renew is also unusual. Further, the provision that in the event of voluntary dissolution of IBS the contracts with the stations for advertising shall all revert to Weed is most extraordinary. The only conceivable reason for it seems to be to enable Weed to take over the functions of IBS in the event of its dissolution.

During this period we have consistently disagreed with IBSR on matters of sales policy. For instance, we believe that network programs offer a better package to advertisers than programs of local origin. Yet no visible effort has been made to sell them. The lack of sales is the only reason which has prevented the establishment of a larger network. We believe that offering specific programs to an advertiser for sponsorship should more easily induce him to buy time. IBSR has declined even to accept from us information regarding programs for sale. The results of our 1946 survey indicate an unusually high listening audience for most campus stations, but IBSR has failed to use this information, and has even used old and much less accurate (and less favorable) figures in making presentations.

We believe that college radio reaches a specialized audience with certain specific potentialities. The per capita cost of reaching these listeners is high compared to the cost of reaching ordinary listeners over a standard station. However, IBSR has apparently not concentrated on those products which are best suited for our market.

IBSR has maintained the position that they should not attempt to sell sponsors located outside of New York City (with one or two possible exceptions). We do not agree with this position. Also, IBSR has issued no organized promotion campaign--their entire activity in this field being confined to one booklet which contained a great deal of inaccurate information. Our contract with IBSR provides that they shall provide "reasonable publicizing of IBS facilities and activities."

The contract also provides that "The sole function of Weed and IBSR shall be the soliciting and obtaining of such (national advertising) contracts." Despite this, IBSR has attempted to enter the field of encouraging more colleges to start stations, a field which IBS feels that it is handling adequately, and into which the intrusion of another agency has produced confusion and ill-will. This condition is aggravated by the very similar names of the two organizations.

We have not agreed with Weed on his choice of personnel, and we have felt that the persons employed were not sufficiently experienced nor qualified by aptitude. It now appears that these employees have not been devoting their entire time to this organization, but have only maintained an appearance of doing so.

The necessity for providing competent personnel for the operation of IBSR should certainly have been apparent to WEED not later than November 1945, when the Governing Council of IBS expressed its dissatisfaction with his personnel. Indeed, it should have been apparent to him from the very start of the operation of IBSR. Yet it is now clear that in December 1945, he did not make sufficiently careful choice of a new manager. Further, he did not adequately supervise his personnel

thereafter. Even when the situation became acute, he made no move to correct it until IBS informed him of its desire to terminate the contract.

Weed also never adequately informed his personnel of the obligations of IBSR to IBS. If he had done so it is inconceivable that the violations of our contract, which are our basis for terminating it, could have occurred. He must even have neglected to keep himself reminded of the terms of the contract, for he personally has been guilty at least of a written indication of intent or desire to violate some of the terms of the contract.

In view of the above failures of Weed to observe what we consider to be basic principles of sound business practice, and his equally obvious failure to exercise good judgment, we do not believe that it would be to the interest of the Member stations to continue to have IBSR or Weed as our national advertising representative under any circumstances.

One of the most important reasons why notice of termination was not given in June is the fact that the fall season is the time when most selling is done. IBSR offered encouraging promises of business for the fall, none of which have been carried out. There has been a noticeable reduction in the time and effort devoted to selling, and Mr. Robinson is now of the opinion that campus radio cannot be sold. We do not agree with this opinion.

We believe that campus radio has now developed to the point where any of the smaller standard station representatives will be happy to have our account. Confidential conferences have confirmed this opinion. We can now choose between several representatives, taking the one in whom we have the most confidence. It is no longer necessary to have a special organization for our account alone, and we believe that better results can be obtained by one which also handles other radio stations, and will not attempt to conceal their representation of us as Weed has done up to this time.

We are advised by two competent lawyers, giving their opinions independently, that our contract can legally be terminated because of the violations committed by Weed, and that Weed cannot successfully sue for damages. We do not believe that any court action will be necessary.

It has been decided to offer Weed the following terms of settlement: That if he agrees to terminate the contract by mutual consent, and to refrain from using the name IBSR in business again, we will pay him the commission on the Herald Tribune contract (the only national account now carried on IBS station) for the remainder of the present contract, which runs until June, 1947, but not for any renewals or extensions of the contract. Also, that we will buy from him all office furniture, equipment, and supplies now located in his office here, at current market prices for second-hand material in the same condition. (The price to be determined by appraisals from second-hand dealers). And that we will take over responsibility for the half of the office now occupied by IBSR and absolve him from further responsibility in this connection.

It is the opinion of the executives that we would be justified in taking out a loan to cover these expenses, and that the future outlook makes the repayment of this loan possible.

The alternative to this settlement, is that we can simply serve Weed with an official notice that the contract is terminated. He can then attempt to sue us, but we are advised by our lawyers that he cannot possibly recover any damages. We do not believe that he would sue under such conditions, but he would be free to make whatever use he sees fit of his half of the office and his office equipment. Under such conditions he would not receive any commission on the Herald Tribune account.

For these reasons, and after consultation with our lawyers, advisors from the radio industry, and officers of most of the stations, the Executive Committee determined to discuss cancellation with Weed. Paul Yergin and David Linton called upon him on Monday, September 23, and suggested that the contract be terminated by mutual consent. Mr. Weed advanced a number of arguments as to why this should not be done. Among them were:

- That Mr. Robinson was responsible, and would be replaced
- That a debt of gratitude was owed to Weed by IBS because of his early support of the campus radio movement
- That cancellation of the contract was unethical business practice
- That we could not obtain another representative
- That the dissatisfaction expressed by our officers was their personal opinion and not shared by the member stations
- That the lack of selling was due to external factors
- That he should be given an opportunity to regain the money which he has lost to date.

None of these arguments was convincing to us, but we agreed to Weed's request to wait one week before taking final action. It appeared to us that Weed's great desire to retain his contract was not in line with the small amount of interest which he has shown in it during the past year. He again expressed the view that he should have more control over the individual stations, rather than operating through the central office.

Since that interview, a number of the stations have received letters from Weed asking advice on how to improve conditions, and asking how he can "encourage more colleges to set up stations." Our lawyer advises us that the stations should not feel obligated to give Weed suggestions on selling - he is supposed to know how - and that since the function of appointing a national advertising representative is specifically placed with the central office by the Governing Council, his inquiries should be referred to New York.

It is the opinion of your executives that the relationship with IBSR has retarded the development of campus radio, and that a much more satisfactory and productive agreement can be made with another representative. Furthermore, we believe that it is still not too late to sign business for the fall season. At our forthcoming interview on Monday, Sept. 30, we intend to offer Mr. Weed the same terms of amicable settlement. If he rejects them, we are prepared to serve him with official notice of termination, which will legally put an end to the contract and free us to appoint another representative.

It is possible that Weed may attempt to continue in the business of representing campus stations, but we doubt that in view of his past record any campus stations would sign with him. Members of IBS, of course, are prohibited by the Business Code from doing business with any representative other than the one appointed collectively by IBS. The new representation agreement will be brought up for ratification at the October meeting of the Governing Council, which will probably be held October 26 and 27 in New York. In the meantime, we hope that a letter of intent will make it possible for another organization to represent us.

The Executive committee is anxious to have the opinion of all stations on this problem, including the majority who have already been consulted by telephone. Officers of the member stations are asked to call or write IBS if they have further questions on this matter. The office telephone numbers are Vanderbilt 6-6075 and Vanderbilt 6-6137; Dave Linton's home phone is Riverside 9-3107; Sunny Brown's is Gramercy 7-4848.

COPY OF IBS-IBSR CONTRACT

AGREEMENT

made this 16th day of February, 1942, between THE INTERCOLLEGIATE BROADCASTING SYSTEM, a non-business association, organized under the laws of the State of Rhode Island and with New York offices at 507 Fifth Avenue, in the Borough of Manhattan, City of New York, hereinafter called IBS, and JOSEPH J. WEED, of 350 Madison Avenue, in the Borough of Manhattan, City of New York, hereinafter called WEED, also doing business under the name of INTERCOLLEGIATE BROADCASTING STATION REPRESENTATIVES, hereinafter called IBSR, of 507 Fifth Avenue, Borough of Manhattan, City of New York.

WITNESSETH:

WHEREAS, IBS has initiated and has for a long time past expended considerable time and effort in assembling a unified group of college radio stations; and

WHEREAS, approximately twenty-eight (28) college and university radio stations are now receiving broadcasts, assembled, processed, coordinated and/or emanating from or under the direction and control of IBS and said college and university radio stations constitute the first intercollegiate broadcasting system in this country; and

WHEREAS, WEED is engaged generally in the business of radio station representation under the name of WEED & Company and also does business under the name of IBSR, which is the exclusive sales representative of IBS; and

WHEREAS, all radio time sales and national radio representation contracts with college and university radio stations which are members of IBS have been and now are made by WEED or IBSR as principal; and

WHEREAS, all contracts with sponsors of programs broadcast over member stations have been and are now made by WEED or IBSR as principle; and

WHEREAS, no written contract exists between the parties hereto and they have been operating under various oral commitments and each of them is desirous of more clearly defining their inter-relationships,

NOW, THEREFORE, it is mutually covenanted and agreed by and between the parties hereto as follows:

1. IBSR and/or WEED hereby assign, set over and transfer to IBS all right, title, and interest to contracts listed below, now held by IBSR:

1. WMS	WILLIAMS COLLEGE	June 3, 1941
2. GBS	GEORGETOWN UNIVERSITY	December 1, 1941
3. SIWASH BROADCASTING	KNOX C OLLEGE	September 9, 1941
4. YALE BROADCASTING SYSTEM	YALE UNIVERSITY	September 18, 1941
5. DARTMOUTH BROADCASTING SYSTEM	DARTMOUTH COLLEGE	May 10, 1941
6. CARDINAL NETWORK	WESLEYAN UNIVERSITY	May 1, 1941
7. UNION BROADCASTING SYSTEM	UNION COLLEGE	May 9, 1941
8. PRINCETON BROADCASTING SERVICE	PRINCETON UNIVERSITY	May 29, 1941
9. COLUMBIA UNIVERSITY RADIO CLUB	COLUMBIA UNIVERSITY	May 7, 1941
10. CORNELL RADIO GUILD	CORNELL UNIVERSITY	May 9, 1941
11. HUSKY NETWORK	UNIVERSITY OF CONNECTICUT	May 1, 1941
12. BROWN NETWORK	BROWN UNIVERSITY	May 9, 1941
13. CAMPUS BROADCASTING NETWORK	UNIVERSITY OF CALIFORNIA at Los Angeles	Nov. 21, 1941
14. VOICE OF CALIFORNIA	UNIVERSITY OF CALIFORNIA at Berkeley	Nov. 19, 1941

IBSR and/or WEED further agrees to take all other steps and execute all other instruments which may be necessary to irrevocably effectuate and complete the assignment to IBS of all its contracts with IBS member stations including but not specifically limited to the contracts listed above.

2. All renewals, modifications or amendments of any kind on the present contracts with the member radio stations are to be made directly with and solely by IBS on terms and conditions determined by IBS, provided, however, that the charges for broadcast time shall not be less than the official card rates published by IBS from time to time, and/or its member stations, unless first ~~SALESMAN'S EXHIBIT~~ approved by IBSR but in no case shall IBSR determine the official published rates of IBS.

3. All new contracts with present member stations and with any other member stations which at any time may join or become affiliated with IBS, as member stations, shall be signed directly with and solely by IBS on terms and conditions determined by IBS, provided, however, that the charges for broadcasting time shall not be less than the official card rates published by IBS and/or its member stations, unless first approved by IBSR but in no case shall IBSR determine the official published rates of IBS.

4. IBS shall receive directly all gross receipts from sponsors or programs now broadcast or to be broadcast over IBS member stations. All billing, processing, and handling of contracts with sponsors for broadcasts over IBS member stations shall be taken care of by and through IBS and IBS shall pay over to IBSR and/or WEED the commissions hereinafter provided for. (This was later revised by letter, copy of which is at the end of this contract).

It is the intention of the parties hereto that the sole function of WEED and IBSR shall be the soliciting and obtaining of sponsored radio time for IBS member stations and that IBS directly shall process, coordinate, and arrange and supervise the various programs over its member stations, and IBS agrees to save harmless WEED and IBSR from any loss or damage in any wise arising out of the publication or dissemination of any program received by IBS from WEED or IBSR.

5. All renewals, modifications, or amendments of any kind of contracts now existing with sponsors of programs processed or to be processed over IBS member stations, shall be countersigned directly with and solely by IBS and its member stations on terms and conditions determined and to be determined by IBS and its member stations, except as herein provided in paragraphs 2 and 3 above; it being the intention of the parties hereto that the sole function of WEED and IBSR shall be the soliciting and obtaining of such contracts.

6. All new contracts with present sponsors shall be signed directly with and solely by IBS and its member stations on terms and conditions to be determined by IBS for itself for itself and its member stations, except as herein provided in Paragraphs 3 and 2 above, and IBS reserves the right to itself and its member stations to reject any contracts with sponsors obtained by WEED or IBSR in its sole and uncontrolled discretion.

7. IBS hereby appoints IBSR its sole and exclusive sales representative for national advertising for the period of this contract, and any and all extensions or renewals thereof, reserving, however, to itself the right to sell radio time or solicit radio advertising from national advertisers directly. On all contracts with national advertising sponsors for radio programs broadcast over any IBS member stations, whether obtained by IBSR, by IBS, or by any of the IBS member stations, IBS agrees to pay IBSR, at the office of WEED within thirty (30) days after the expiration of each month, a sum equal to fifteen percent (15%) of the gross receipts thereof. For the purposes of this contract national advertising shall mean advertising which is sponsored by a corporation, firm, partnership or individual doing business in two or more cities. IBS agrees to furnish IBSR with copies of all contracts with national advertising sponsors for radio programs to be broadcast over any IBS member station, which have not been secured by IBSR.

8. IBSR shall not represent any station or stations other than members of IBS. It is mutually understood and agreed that the aforesaid limitation on IBSR does not apply to WEED. WEED and IBSR are to take all steps necessary and make such financial investments in IBSR, its efforts and activities as will reasonably insure the adequate representation of IBS, and afford sufficient coverage of such national advertising concerns as may be potential sponsors of programs for IBS and its member stations, and reasonable publicizing of IBS facilities and activities; and IBSR and WEED promise to exert all reasonable efforts to obtain such advertising as may be potentially available to IBS and its member stations.

9. In the event of a sale, transfer or consolidation of the property of IBS, IBS hereby guarantees that its successor, assignee or transferee, will fulfill the terms and conditions herein contained for the full life of this agreement. It is also mutually agreed that all rights, power and privileges of this contract shall enure to any successor, assignee or transferee of IBS, unless IBS shall become bankrupt or insolvent before the completion of this contract, in which event this contract shall be immediately terminated. In the event of the voluntary dissolution of only, of the Intercollegiate Broadcasting System, (IBS), it is understood and agreed that all radio time sales contracts with college and university radio stations and all contracts with sponsors shall be transferred to WEED, provided, however, that if any IBS member college station does not approve of the transfer and gives notice

to WEED, by registered mail, to that effect within sixty (60) days, such transfer shall not be binding on said member station.

10. This agreement shall run from the date of execution hereof, up to and including January 1, 1947, and shall thereafter renew itself continuously for periods of one (1) year unless either party notifies the other by registered mail received at least six (6) months before the beginning of the first renewal period or any subsequent renewal period, of its desire to terminate this agreement, in which event this agreement shall terminate at the beginning of the next renewal period which would have commenced thereafter; otherwise, it shall remain in full force and effect subject to the terms and conditions hereof. The notice of termination hereinabove provided for shall be addressed to IBS, at 507 Fifth Avenue, City of New York, New York, and to WEED ~~and~~ and IBSR at 350 Madison Avenue, City of New York, New York.

11. IBS shall keep true and correct books of account, and such books of account during all business hours, shall be open to the examination and inspection of IBSR, or its duly authorized attorney or accountant.

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12. A waiver of any breach shall not be construed to effect a waiver of any future breach of this agreement. This agreement comprises the entire understanding of the parties hereto on the subject matter hereincontained; any and all oral representations or agreements of any agent of either party hereto shall be null, void, and of no effect whatsoever.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

THE INTERCOLLEGIATE BROADCASTING SYSTEM

By: George Abraham
Chairman

By: Louis Bloch
Business Manager

By: David W. Borst
Technical Manager

By: Lincoln Diamant
Program Manager

INTERCOLLEGIATE BROADCASTING SYSTEM ~~RE-~~
REPRESENTATIVES

By: Joseph J. Weed

By: Joseph J. Weed
Individually

Copy of letter

Mr. Joseph J. Weed, IBSR
507 Fifth Avenue, New York, N.Y.

Dear Mr. Weed:

I have been empowered by the Board of Governors of the Intercollegiate Broadcasting System to instruct you to set up books and handle the bookkeeping and billing from this day onward until further notice, for the nations advertising run on the Intercollegiate Broadcasting System stations; also to collect the monies from this advertising from the advertisers or from their respective advertising agents and to rem it to the Intercollegiate Broadcasting System and individual Intercollegiate Broadcasting System stations the monies due them from this advertising.

You will find this ~~letter~~ written and signed in duplicate. Your signature on one copy returned to me will constitute your acceptance of this responsibility.

Sincerely yours,

Intercollegiate Broadcasting System
George Abraham
Chairman, Executive Committee

Accepted by

Joseph J. Weed
for: Intercollegiate Broadcasting Station Representatives